### **DOCKET FILE COPY ORIGINAL**

1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595 p202 624-2500 f202 628-5116



043:smd 01215.010

Robert M. Halperin (202) 624-2543 rhalperin@crowell.com

May 7, 2001

RECEIVED

BY HAND

MAY - 7 2001

Ms. Magalie Roman Salas Secretary Federal Communications Commission 445 Twelfth Street, S.W. Room TW-A325 Washington, DC 20554

PEDEFAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

Re: In the Matter of Federal-State Joint Board on Universal Service Petition for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local or Toll-Free Access Exists, CC Docket No. 96-45

Dear Ms. Salas:

Transmitted herewith on behalf of the State of Alaska are an original and four (4) copies of the "Reply Comments of the State of Alaska" for filing in the above-referenced docket.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Robert M. Halperin

**Enclosures** 

cc: Sheryl Todd (3 copies)

International Transcription Service (1 diskette copy)

No. of Copies rec'd O++
List A B C D E

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

Petition for Waiver for the
Utilization of Schools and Libraries
Internet Point-of-Presence in
Rural Remote Alaska Villages Where
No Local or Toll-Free Access Exists

MAY - 7 2001

MAY - 7 2001

PRICE OF THE SCREENITY

### REPLY COMMENTS OF THE STATE OF ALASKA

Robert M. Halperin CROWELL & MORING LLP 1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004 202/624-2543

Attorneys for the State of Alaska

#### Of Counsel:

John W. Katz, Esquire Special Counsel to the Governor Director, State-Federal Relations Office of the State of Alaska Suite 336 444 North Capitol Street, N.W. Washington, D.C. 20001

May 7, 2001

### **Table of Contents**

			<u>Page</u>
Sum	mary.		ii
I.	There Is Widespread Support For The Petition.		
II.	Most Critics Of The State's Proposal Recognize The Need For Steps To Promote Internet Access In Rural Alaska.		
III.	Grant Of The Petition Is In The Public Interest.		
	A.	The Petition Is Limited In Scope And Would Not Increase The Costs Of The E-Rate Program	11
	B.	The Petition Does Not Violate The Principle Of Competitive Neutrality	13
	C.	The Petition Is Not Unreasonably Vague.	16
	D.	Consortia and Technology Plans Are Not The Answer	18
	E.	The Fact That The Petition Is Not A Long-Term Solution Does Not Mean That Grant Of The Petition Is Not In The Public Interest.	21
IV.	There Is No Statutory Bar And No Other Commission Regulation Needs To Be Waived		22
	A.	The Petition Does Not Violate, Or Require A Waiver Of, Any Statutory Provision	23
	B.	No Other Commission Rule Needs To Be Waived	27
V.	Cone	clusion	28

### Summary

The State of Alaska has submitted a petition seeking a waiver of a Federal Communications Commission rule to permit schools that receive E-rate funding in certain remote Alaskan villages to make the E-rate supported services they use to access the Internet available for use by others in the community during non-school hours. There are several narrowing restrictions in the State's Petition aimed at assuring that its proposal would not increase the cost of the E-rate program and would not apply where there are competing Internet access services.

The vast majority of the comments filed in response to the State's Petition support it enthusiastically. They recognize the urgent and compelling need for the service the waiver would permit. Indeed, even commenters opposing the Petition recognize the need to promote Internet access in these isolated communities.

The opponents' comments do not demonstrate that the requested waiver is not in the public interest. The needs in rural Alaska and the economic and other barriers to the provision of Internet access in this area are unique. In its Second Advanced Services Report, the Commission recognized that where E-rate supported facilities provide the only Internet access in a community, consideration should be given to permitting others in the community to use those facilities. This Petition presents that opportunity.

The opposing comments also do not establish that grant of the Petition would violate any statutory provision or any Commission rule other than the rule which the State requested the Commission to waive (47 C.F.R. § 54.504(b)(2)(ii)).

## Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Petition for Waiver for the	)	
Utilization of Schools and Libraries	)	
Internet Point-of-Presence in	)	
Rural Remote Alaska Villages Where	)	
No Local or Toll-Free Access Exists	)	
	)	

### REPLY COMMENTS OF THE STATE OF ALASKA

The State of Alaska ("the State" or "Alaska") has submitted a petition seeking a waiver of a Federal Communications Commission ("FCC") rule to permit schools that receive E-rate funding in certain remote Alaskan villages to make the E-rate supported services they use to access the Internet available for use by others in the community during non-school hours. There are several narrowing restrictions in the State's Petition aimed at assuring that its proposal would not increase the cost of the E-rate program and would not interfere with competing Internet access services.

Petition of the State of Alaska, filed January 29, 2001 ("Petition").

The vast majority of the comments filed in response to the State's Petition support it enthusiastically. They recognize the urgent and compelling need for the service that the waiver would permit. Indeed, most of the commenters opposing the Petition also recognize the need for steps to be taken to promote Internet access in these isolated communities.

The arguments set forth in the opponents' comments do not demonstrate that the requested waiver is not in the public interest. Indeed, as set forth below, in its Second Advanced Services Report, the Commission recognized that where E-rate supported facilities provide the only Internet access in a community, consideration should be given to permitting others in the community to use those facilities. In addition, as Chairman Powell recently stated in testimony before the House Telecommunications Subcommittee, the Commission "will pursue the worthy universal service goals of ubiquity and affordability as new networks are deployed, but [we] will challenge ourselves to do so in creative ways." This Petition presents that opportunity.

The opposing comments also do not establish that grant of the Petition would violate any provision of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, or any Commission rule other than the rule which

Opening Statement of Chairman Michael K. Powell, before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, at 2 (March 29, 2001).

the State requested the Commission to waive (Section 54.504(b)(2)(ii) of the Commission's rules).

### I. There Is Widespread Support For The Petition.

Alaska's E-rate waiver petition has received almost unanimous support from parties filing comments. Those parties filing supportive comments include citizens, educators, local housing authorities, clergy members, a tribal council, a chamber of commerce, and a state legislator. These comments describe a dire situation where many Alaskan communities lack toll-free, dial-up Internet access. The comments also confirm the need for Internet access, especially in the remote, isolated rural areas of Alaska where "access to information through the Internet" is "the only equalizing force." In addition, these supportive comments describe the beneficial uses to which the Internet access gained by grant of the Petition would be put to help bridge the digital divide.

Many parties filing comments lack Internet access and urge the Commission to grant the Petition so that they may gain access to the Internet through the E-rate services in their communities. Several parties state that the lack of commercially available local or toll-free Internet access is due to the small size of their communities. "Private companies are not willing to provide local [I]nternet access because there are not enough people to make it worth their while." For those who

<sup>3</sup> Comments of Brett Hill.

<sup>&</sup>lt;sup>4</sup> Comments of John Broder; see also Comments of Theodore W. Horner.

access the Internet via a long distance call to an ISP, this service "is inadequate to support reliable electronic transmissions" and "so slow as to be virtually unusable." Notwithstanding those problems, long distance access is "not affordable" for users who must pay the ISP's monthly charge plus significant per-minute toll charges.

The State's librarian gives the example of Ruby, Alaska where requests to carriers for the past four years have not resulted in any Internet access outside the school.<sup>7</sup> "Parents, the tribal council, the city council and other residents have no access to the Internet." This situation is prevalent throughout much of the State, confirming the dire need for community residents to gain connectivity through the State's E-rate waiver plan.

Many parties implore the Commission to grant the Petition so that they may have Internet access to help their children enjoy the same educational opportunities as their peers in the urban cities in Alaska and in the Lower 48. As one citizen put it: "Students in Alaska, especially students in Bush Alaska, have some of the lowest test scores in the U.S. [and] are not connected to the Web, and all of the educational advantages it brings." Another citizen stated:

Comments of Mark Hoelsken, S.J.; see also Comments of Sylvia Beans; Comments of Geraldine Pankan; Comments of Kathy Radich; Comments of Francis Thomson; Comments of Greg Wood, S.J.

<sup>6</sup> Comments of David Lewis, Jr.

<sup>&</sup>lt;sup>7</sup> See Comments of Karen R. Crane, State Librarian, at 2 ("Crane Comments").

<sup>8</sup> *Id*.

<sup>9</sup> Comments of Susan Hubbard.

[Internet access] is crucial to assisting our children, parents, and community in lessening the digital divide that is present in our state. Most rural Alaskan villages do not have the ability to view their school websites from home, where many teachers have provided curriculum links, student resources, parent resources, etc. . . . Right now, when the school door closes, most students are shut off from a valuable learning and teaching tool until the next morning, since their parents cannot afford the enormous costs for long distance Internet.<sup>10</sup>

The educational benefits of Internet access for students at their isolated, rural homes are endless. The Internet will provide these Alaskan children with exposure to the world beyond their villages such as "virtual" access to museums and other resources available in urban areas, and give them an opportunity to "compete on a level playing field." One university professor who teaches her courses via audio conference "would like to include a visual component to [her] courses via the [I]nternet." The ability to "obtain timely financial aid information [and] the ability to submit assignments regardless of the local Alaskan weather" are also facilitated by Internet access community-wide. The uses contemplated by the supportive comments thus promote the purposes of the E-rate program.

In addition to the many comments addressing the educational necessity for affordable Internet access, many also note the need for Internet connectivity to stimulate economic development in rural Alaska where "mountain ranges,"

<sup>10</sup> Comments of Pam Lloyd.

<sup>11</sup> Comments of Justyna Katelnikoff, Ouzinkie Tribal Council.

<sup>12</sup> Comments of Barbara Adams.

<sup>13</sup> Comments of the Malinda Chase.

waterways, glaciers, vast wilderness and climate create natural barriers to transportation and communications linkages."<sup>14</sup> To rural Alaskan communities, "access to the Internet is a critical issue to the future economic viability of the rural communities."<sup>15</sup>

The supportive comments set forth other ways that after-hours access to E-rate connectivity could benefit residents in rural Alaska. For example, State Representative Carl Morgan, Jr. urges the Commission to grant the Petition so that many of his constituents can gain access to the state government through websites and e-mail communication with legislators. 16

### II. Most Critics Of The State's Proposal Recognize The Need For Steps To Promote Internet Access In Rural Alaska.

Even critics of the State's proposal recognize the need for steps to be taken to promote Internet access in rural Alaska. According to the Alaska Telephone Association ("ATA"), 164 Alaskan communities with an average population of 213 residents do not have a local Internet service provider. Indeed, ATA states that "Internet service, because of its potential for social and educational benefit, is a

<sup>14</sup> Crane Comments, at 1.

Comments of Kodiak Chamber of Commerce, at 1; see also Comments of Bradley Kehoe.

<sup>16</sup> Comments of State Rep. Carl Morgan, Jr.

<sup>17</sup> Comments of the Alaska Telephone Association, at 2 n.4 ("ATA Comments").
There are many more communities that do not have local or toll-free dial-up
Internet access than those identified by ATA. ATA's exhibits list only 270 of
the 323 communities in Alaska. Many small communities, such as Ekuk,
(continued...)

particularly important form of information service – the more so here as the geographic isolation of Alaskan communities limits alternative means for addressing such needs."<sup>18</sup>

United Utilities, Inc. also recognizes the need for Internet access in rural Alaska. It provides local dial-up Internet access in 11 of the 60 communities it serves; another two of the 60 communities are served by other ISPs. <sup>19</sup> Thus, there is no local or toll-free dial up Internet service in 47 of the 60 communities where it provides local exchange service. These communities have a total population of about 15,000, or average population of about 320. <sup>20</sup>

Nook Net notes that the costs of interstate transport in rural Alaska are huge and most rural Alaskan communities are too small to justify the expenditure. "For instance, a T1 line generally lists for \$14,000 per month, and a simple 56K line for

<sup>(...</sup>continued)

Shaktoolik, and Sterling, are omitted from ATA's exhibits. It is likely that most of the omitted communities lack local or toll-free dial-up Internet access.

Id. at 2. ATA also recognizes that "the near-term needs" for Internet access in rural areas set forth in the State's petition are "correctly identified." *Id.* at 1-2.

Comments of United Utilities, Inc., at 1 & n.2 ("United Utilities Comments").

Id. at 1. Exhibit 1 to these comments identifies 129 locations without a local ISP. In fact, the number is greater. United Utilities' Exhibit 1 omits an entire school district – the Aleutian Region School District.

United Utilities appears to suggest that the relief requested would not be meaningful because "Every Native tribe, including those in villages without an ISP, can now get toll free access to the Internet through the U.S. Department of Interior – Alaska Tribal Technology Access Program." *Id.* at 11 n.22. That program allows tribal offices to call a toll-free number to access the Internet; it does not provide access for the community as a whole.

about \$1,700 per month. When these costs are allocated among the potential users in a village of 200 to 300 persons, the cost per user soars to unreasonable levels."21

The United States Telecom Association ("USTA") claims that the State has not shown that the situation in Alaska is unique.<sup>22</sup> The State respectfully disagrees. As set forth in the Petition (at pages 6-9) and in some of the supporting comments, Alaska is unique, given the extreme isolation of its rural communities, the lack of a transportation infrastructure, the harsh climatological and geographic conditions, and the very high costs of telecommunications transport used to access the Internet. No other state requires expensive satellite connections to provide assess to ISPs, medical, emergency and government services to rural areas. These factors combine to make access to information services in these parts of Alaska more difficult than any other place in the Nation.<sup>23</sup>

Comments of Nook Net, at 2 ("Nook Net Comments").

Comments of the United States Telecom Association, at 6 ("USTA Comments").

The northerly and westerly location of Alaska also makes satellite-based services, like direct broadcast satellite service, very limited in rural Alaska (and where it is available, more expensive equipment is necessary to receive it). See United Utilities Comments, at 6 (quoting GCI as stating "Alaska's geographical position severely limits satellite coverage of Alaska. Specifically, Alaska's high northerly latitude, and its far west longitude, limit the number of satellites in the domestic arc that are visible from any given location within the State."). For example, as the Commission recognized in its Second Advanced Services Report, DirectPC does not provide service to Alaska. In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability, Second Report, CC Docket No. 98-146, FCC 00-290, at ¶ 59 (rel. Aug. 21, 2000) ("Second Advanced Services Report").

Further evidence of this point can be found in the Commission's Second Advanced Services Report. Although through this Petition the State seeks to promote only dial-up Internet access, the difference in the deployment of broadband services in rural Alaska as compared the rest of the United States demonstrates the uniqueness of Alaska. Contrary to the comments of the Independent Telephone & Telecommunications Alliance ("ITTA") (at 3 n.4), the Commission recognized in that report that vast portions of the State of Alaska lack access to broadband services. Figures 6 and 7 of the Second Report show no broadband subscribers or providers in much of rural Alaska. While there may be isolated instances of customers receiving broadband services in rural Alaska (e.g., some schools and health care providers), local broadband service is not generally available. Indeed, that report states that 79 percent of the zip codes in Alaska lack any broadband service. That figure is almost twice the national average of 41 percent of zip codes and greater than any other state.<sup>24</sup>

#### III. Grant Of The Petition Is In The Public Interest.

The five commenting parties critical of the Petition<sup>25</sup> raise a variety of arguments why, in their view, grant of the Petition is not in the public interest. The State respectfully disagrees with these arguments. Indeed, in the Second Advanced

Id. at Appendix B, Figure A.

The five parties opposing or criticizing the petition are the ATA, ITTA, Nook Net, USTA, and United Utilities.

Services Report, the Commission suggested that approaches like the one set forth in the State's Petition would be in the public interest.

Citing testimony from the Anchorage Field Hearing concerning the availability of advanced services in rural Alaska, the Commission found that "[i]n some instances the E-rate has made possible an advanced service connection to the Internet where even dial-up access was not available before." It then stated:

[I]n communities where through the E-rate the school has the only high-speed connection to the Internet, or sometimes the only Internet connection at all, there is a unique opportunity for all members of the community to gain access to the school facilities and to expand deployment beyond the student population.<sup>27</sup>

It concluded by pledging that "we will consider reviewing the [E-rate] program to determine whether it can do even more to promote high-speed connections in schools, libraries and through those locations, to the surrounding communities." That is precisely what the Petition seeks to do.

<sup>26</sup> *Id.* at ¶ 175.

<sup>27</sup> *Id.* at ¶ 229.

Id. at ¶ 267. Commissioner Ness, in her separate statement on that report, stated, "Not only can a high-speed Internet connection to a school or library be a tremendous resource for the whole community, but the facilities can serve as the foundation for broader deployment throughout the area. We should examine carefully how we can leverage this extremely successful resource."

### A. The Petition Is Limited In Scope And Would Not Increase The Costs Of The E-Rate Program.

Contrary to the comments of the ATA, the requested waiver is not "open ended", <sup>29</sup> and is limited in scope. It would apply only in those communities where there is no local or toll-free dial-up access to the Internet, even at narrowband speeds. Those communities are finite in number. Moreover, the relief provided by a grant of the Petition would apply only where the services used by the school are purchased on a non-usage sensitive basis, so that increased usage of the service would not increase the costs of that service to the E-rate program. <sup>30</sup>

USTA contends that costs to the E-rate program could increase if the Petition is granted because of the "potential impact that community-wide access may have on the design and capacity needs of the internal school network." Similarly, ITTA contends that "communities themselves may pressure the schools and libraries to over-estimate their needs" and increased usage of the school's facilities "could degrade service and cause E-rate subsidized facilities to require more frequent maintenance and repair, further raising costs." 32

These concerns are without merit. First, the concerns about over investment apply to the E-rate program apart from this waiver request. Their argument really is that schools and libraries may over invest in telecommunications facilities if they

ATA Comments, at 1.

See Petition, at 2-3.

USTA Comments, at 7.

<sup>32</sup> ITTA Comments, at 4-5.

are paying only a relatively small percentage of the total price for those services. Yet, the Commission has already recognized that the cost-sharing formula for E-rate support (where even the poorest and most rural communities pay 10 percent of the cost of the supported services) and the requirement that schools pay for all of the cost of related services and equipment that are not supported are adequate to prevent "gold-plating."<sup>33</sup>

Second, there are several checks in place. The required state approval of technology plans provides protection from unnecessary expenditures.<sup>34</sup> Moreover, the administrator of the universal service fund currently evaluates annual requests by schools and libraries for universal service funding and would deny funding for any inappropriate use.

Third, the proposal would not increase the costs to the E-rate program due to increased utilization of school equipment. As the diagram attached to the petition shows, the equipment used in connection with community use would be different from the equipment used by the school and would be connected directly to the equipment through which the telecommunications service is accessed. There is no reason to expect community use of the telecommunications service used by the

Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776 at ¶ 497 (1997) (recognizing that even a 10% copayment "might create an impossible hurdle for disadvantaged schools and libraries" and that the E- rate program does not support the costs of other resources, including computers, software, training and maintenance, which constitute more than 80% of the cost of connecting schools to the Internet).

<sup>&</sup>lt;sup>34</sup> See 47 C.F.R. § 54.504(b)(2)(vii).

school to access the Internet to increase the costs of maintenance of the school's equipment.

## B. The Petition Does Not Violate The Principle Of Competitive Neutrality.

Each of the parties criticizing the Petition alleges that it violates, or could violate, the principle of competitive neutrality the Commission adopted in connection with its universal service policies.<sup>35</sup> They generally argue that the ISP selected by the school or community to provide Internet access would have an unfair competitive advantage and the program would remove the incentive for others to offer Internet access services.

These concerns, too, are without merit. One of the conditions proposed in the Petition is that the relief granted would apply only if no firm is offering local or toll-free Internet access in the community. Indeed, the communities that would qualify for the waiver are so small — and the costs of serving them so large — that no ISP has chosen to offer services there on a local or toll-free basis. If there is no entity competing against the ISP using the school's excess telecommunications capacity during non-school hours, there can be no violation of principles of competitive neutrality. Moreover, the Petition also provides that if another firm should begin to

See ATA Comments, at 8; ITTA Comments, at 6; Nook Net Comments, at 1; USTA Comments, at 8; United Utilities Comments, at 2.

offer Internet access in the community, the relief granted by the waiver would lapse after a transition period.<sup>36</sup>

There is no reason to believe that the relief requested in the Petition would squelch any new entry. As Nook Net notes, the service that would be provided through this waiver is limited in scope (to non-school hours).<sup>37</sup> A full-time service would undoubtedly be more attractive to users. And, the connectivity provided by the E-rate program may well stimulate demand in the community and possibly demonstrate the commercial viability of an independent ISP operation.<sup>38</sup>

ITTA and Nook Net contend that the telecommunications provider selling the satellite service to the school or library would have an unfair advantage in operating the ISP service. ITTA states that "the Alaska Petition, if granted, would seem to allow a carrier to effectively sell E-rate subsidized Internet services twice: once to the schools and libraries and then a second time to customers throughout the community." Nook Net similarly contends that the State's proposal "clearly places the present e-rate provider to the school in question in a defacto monopolistic situation." These contentions, too, are misplaced.

Petition, at 14.

<sup>37</sup> See Nook Net Comments, at 1.

<sup>38</sup> See Comments of General Communication, Inc., at 3.

<sup>&</sup>lt;sup>39</sup> ITTA Comments, at 4.

Nook Net Comments, at 1.

As demonstrated in the comments of United Utilities, once a telecommunications provider has sold a service or capacity to a school, it no longer has any authority to sell that same service or capacity to others or, for that matter, to use that capacity itself.<sup>41</sup> As AT&T Alascom told United Utilities:

[T]he transport service provided by AT&T Alascom to connect village schools with the Internet is provided under terms of AT&T Alascom's interstate private line tariff. As such AT&T Alascom cannot provide to a third party ability to access any "unused bandwidth" that may or may not exist on these tariffed, private line circuits that are dedicated to the schools.<sup>42</sup>

ITTA suggests that the Commission should require schools or libraries operating under the requested waiver to make the excess capacity available on a non-discriminatory basis to any ISP that wishes to use it.<sup>43</sup> Such a proposal may raise the costs of providing this service unnecessarily. The affected communities

See United Utilities Comments, at 5-6 and Exhibit 2.

Id. at 5. ATA contends that the telecommunications services sold by GCI to schools and libraries are sold pursuant to a broadband packet switched data services tariff and not a private line tariff. It thus contends that there is no dedicated circuit that lies fallow during non-school hours. ATA Comments, at 4-5. The State does not believe that whether the circuit is effectively virtual or actual is material. In both cases, the school or library is paying for the use of telecommunications capacity on a 24 hour a day, 7 day a week basis and is not using it all the time. (ATA's Exhibit 5 reveals a monthly recurring cost for this service of \$11,515.00.) The community could make use of this resource when the school is not. In any event, ATA is mistaken; schools and libraries purchasing service from GCI generally purchase a dedicated circuit to access GCI's Internet platform on a 24 hour a day, 7 day a week basis. The State understands that GCI will be addressing this point further in its reply comments.

See ITTA Comments, at 6.

are very small and very poor.<sup>44</sup> No ISP has sought to provide local or toll-free service in these communities, and it is unlikely that these communities could support more than one provider, even if the provider does not have to pay for interstate transport.<sup>45</sup> In addition, ITTA incorrectly assumes that the transmission link to the village will be of a sufficient size to make it feasible to split bandwidth between ISPs. For example, if the school only has a 128k line, splitting that line between various ISPs would appear impractical and could degrade service. In any event, no ISP should be forced on the community. If there is a choice in selecting an ISP, that selection should be made by the school and/or the community affected. If the school or community wishes to permit multiple ISPs and is willing to incur additional costs for that option, then that choice would be allowed under our proposal.

### C. The Petition Is Not Unreasonably Vague.

Several commenters contend that the Petition is unreasonably vague because it does not specify the arrangements between the school and the ISP that would be given the right to use the school's telecommunications services, does not limit the

See Petition, at 7 (subsistence hunting and fishing provide the main source of livelihood).

See Petition, at 12 (start-up costs for an ISP in a village are often more than \$20,000, not including the monthly interstate transport cost).

rates that the ISP would charge the community, does not identify an enforcement mechanism, and does not assure competitive neutrality.<sup>46</sup>

The State believes that the Petition is not unreasonably vague on these issues. The key points, as set forth in the Petition, are (1) the school will not resell its unused telecommunications capacity, but will make it available to an ISP at no charge; (2) the services that the school is sharing are purchased on a non-usage sensitive basis; (3) the ISP may use that capacity only during non-school hours; and (4) the waiver will be applicable only if there is no entity offering local or toll-free dial-up Internet access. Otherwise, the arrangements should be left to each local school system. It is in the best position to assure that community use does not interfere with the educational use of the telecommunications service during school hours. It has the incentive to assure that the ISP's operations do not increase its own telecommunications, equipment, and maintenance costs. So that its faculty and students can access the Internet after school, it has the incentive to make sure that the ISP does not charge an unreasonable price.

There is no reason why the Commission should seek to regulate the price charged by the ISP. Notwithstanding the fact that the E-rate program pays up to 90 percent of the cost of Internet access for schools and libraries, the Commission does not regulate the price of E-rate supported Internet access. Nor does the

See ATA Comments, at 6; ITTA Comments, at 1, 3-4; United Utilities Comments, at 11.

Commission regulate the price of Internet access in any other way. There is no reason for it to do so here.

Nor is there a need for any special enforcement mechanism. The waiver, if granted, would have certain conditions attached to it by the Commission. If those conditions or any statute or Commission regulation were violated, the Commission's normal enforcement mechanisms would apply.

### D. Consortia and Technology Plans Are Not The Answer.

ATA and United Utilities suggest that requiring schools to join consortia would be a better approach than the approach taken in the Petition.<sup>47</sup> ATA also suggests that the goals of the Petition could be achieved if the State approved school technology plans only if the school purchases "connectivity" which might leave capacity available for others in the community (rather than dedicated circuits) or purchases services through a consortium that would include a local telecommunications provider or an ISP.<sup>48</sup>

The State does not believe that such an approach is consistent with the Commission's rules. Section 54.501(d)(1) of the Commission's rules provides that, with one exception, the only entities that are permitted to join a consortium with schools and libraries for the purchase of telecommunications and other supported services are "public sector (governmental) entities, including, but not limited to,

See ATA Comments, at 7-9; United Utilities Comments, at 7-9.

ATA Comments, at 8-9; see also United Utilities Comments, at 10 (urging that technology plans endorse or mandate consortia).

state colleges and state universities, state educational broadcasters, counties, and municipalities."<sup>49</sup> A private company – whether it be a local exchange carrier or ISP – is not permitted to join a consortium.

The only exception to this rule is that a consortium may include private sector entities for the purpose of purchasing services from an incumbent local exchange carrier ("ILEC") at tariffed rates.<sup>50</sup> The telecommunications services that need to be made available to an ISP – and that would be shared under the State's petition – are provided by interexchange carriers, not an ILEC. This exception, therefore, is inapplicable.

Even if a consortium could be formed, the price for service would still remain unaffordable for most villages. A consortium would, if permitted, provide the local provider some volume-related reduction in the cost of the telecommunications transport service. That cost would still be significant, and the number of customers from whom that cost would need to be recovered would still be small. Consortia are not the answer.

Nor is State approval of technology plans a panacea. ATA and United

Utilities seek to use the technology plan approval requirement to force the

formation of consortia. Tying approval to the use of consortia, however, will not

<sup>&</sup>lt;sup>49</sup> 47 C.F.R. § 54.501(d)(1) (emphasis added).

Id.

advance the goal of providing Internet access in the community for the reasons set forth above.

The State should not dictate to the local community how it should purchase telecommunications services (i.e., "connectivity" rather than dedicated access). The purpose of the technology plan requirement is to ensure that schools and libraries "have the necessary hardware, software, wiring, and teacher training prior to ordering services eligible for a discount."51 The State or other entity reviewing technology plans is to determine whether the plans are "based on the reasonable needs and resources of the applicant and are consistent with the goals of the program."52 As long as the school or library can demonstrate that it has the resources to use the services that are supported by the E-rate program, a technology plan should be approved. Moreover, the purchase of "connectivity" may not be adequate for the school's purpose and may impose additional costs on the school to assure that it is receiving that for which it is paying. In any event, designing the school network based on a technology plan that considered the needs of both the school and the community would be contrary to our original goal that the needs of the community not increase the cost of the E-rate program.

Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Red. 87, at ¶ 601 (Jt. Bd. 1996).

Federal-State Joint Board on Universal Service, Access Charge Reform, 13 FCC Red. 5318, at ¶ 153 (1997).

### E. The Fact That The Petition Is Not A Long-Term Solution Does Not Mean That Grant Of The Petition Is Not In The Public Interest.

ATA contends that the Petition is but a short-term solution to a long-term problem.<sup>53</sup> Similarly, Nook Net says that the real problem is high transport costs, and that the Petition does nothing to solve that problem.<sup>54</sup>

The State does not disagree with those points. Indeed, as set forth in the Petition: "The State continues to be committed to doing what it can to reduce the costs of bandwidth in these communities, but until a solution to that problem is found, other steps must be taken to provide residents of these communities with Internet access that is technically possible and economically feasible."55

Promoting the availability in remote areas of information services where they are not available today is unquestionably in the public interest. Indeed, in adopting the Telecommunications Act of 1996, Congress declared that "access to . . . information services should be provided in all regions of the Nation," and consumers in rural areas "should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to

<sup>53</sup> See ATA Comments, at 1, 3, 9.

<sup>54</sup> See Nook Net Comments, at 2.

Petition, at 10.

<sup>&</sup>lt;sup>56</sup> 47 U.S.C. § 254(b)(2).

rates charged for similar services in urban areas."<sup>57</sup> Steps that would promote the near-term delivery of urgently needed information services in rural Alaska – at no additional cost to the E-rate program – are in the public interest, even if they are not a panacea for all of the problems of isolation and high bandwidth costs.

### IV. There Is No Statutory Bar And No Other Commission Regulation Needs To Be Waived.

A few commenters contend that the Petition may not be granted because it is contrary to certain provisions of the Communications Act. USTA argues that the petition violates Section 254(h)(1)(B);<sup>58</sup> USTA and United Utilities contend that the petition violates Sections 254(c)(1) and (c)(2);<sup>59</sup> and United Utilities contends that the petition violates Section 254(e).<sup>60</sup> ATA, on the other hand contends that the State's proposal would also require waiver of Section 54.500 and 54.518 of the Commission's rules, which address wide area networks.<sup>61</sup> None of these contentions is correct.

<sup>57</sup> *Id.* at § 254(b)(3).

<sup>58</sup> See USTA Comments, at 3-4.

<sup>59</sup> See USTA Comments, at 4; United Utilities Comments, at 4.

<sup>60</sup> See United Utilities Comments, at 3.

See ATA Comments, at 5-6.

### A. The Petition Does Not Violate, Or Require A Waiver Of, Any Statutory Provision.

The Petition does not violate, or require a waiver of, or forbearance from, any statutory provision. The arguments to the contrary misconstrue the Petition. Each of the statutory arguments set forth by the Petition's critics is addressed below.

Section 254(h)(1)(B). This section provides, in relevant part, that "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties." USTA argues that this provision means that the services provided to the schools and libraries can be used only for educational purposes. It also says that this provision has the same meaning as the Commission rule that the State asked to be waived (Section 54.504(b)(2)(ii)), and therefore that the State implicitly admits that this statutory section is violated.

Section 254(h)(1)(B), read literally, authorizes a telecommunications carrier to provide services to a school or library when those services are requested for educational purposes. The State's proposal does not seek to vary from or change that requirement. The requesting school must still certify that the services that it is requesting are required for educational purposes. Indeed, the purpose of the statute is to make sure that schools do not order services that they do not need for

<sup>62 47</sup> U.S.C. § 254(h)(1)(B) (emphasis added).

educational purposes. As long as the schools are not requesting more services than they need for educational purposes, the language and purpose of the statute are satisfied. As set forth above, 63 the Commission has found that schools will not order more services than they need, given the co-payment requirement.

The only question raised by the Petition is whether, during after-school hours, other uses can be made of the telecommunications services that the school needs for educational purposes when it is open. In our view, the statute does not preclude such use as long as that use does not impose additional costs on the E-rate program.<sup>64</sup>

<sup>63</sup> See section III.A. of these reply comments, supra.

On the other hand, the Commission rule that the State asks to be waived, Section 54.504(b)(2)(ii), requires that "The services requested will be used solely for educational purposes." This language is plainly more demanding than the language of the statute.

USTA also cites two decisions by the Common Carrier Bureau denying requests for review of funding decisions by the Schools and Libraries Division of the universal service administrator. Request for Review of the Decision of the Universal Service Administrator by Anderson School, Staatsburg, New York, File No. SLD-133664, DA 00-2630 (rel. Nov. 24, 2000); Request for Review of the Decision of the Universal Service Administrator by New Kensington-Arnold School District, New Kensington, Pennsylvania, DA 99-2956 (rel. Dec. 21, 1999). It claims these Bureau decisions demonstrate that the schools and libraries program is "strictly limited to 'educational purposes." USTA Comments, at 3.

These decisions are irrelevant. Both involve requests for funding for ineligible services. In contrast, no additional funding would be required by grant of the State's petition. The eligible services that are funded now would not receive any increased funding. Moreover, those decisions did not involve requested waivers.

Sections 254(c)(1) and (c)(2). These sections of the statute establish the criteria for defining what services should be supported by federal universal service support mechanisms. They require that the definition be established by the Commission only after a Joint Board recommendation. USTA and United Utilities argue that the State is implicitly seeking to change the definition of universal service because grant of the Petition would result in support for Internet access services to residential users, and the Commission has not determined (based on a Joint Board recommendation) that such a service should be supported by universal service funds.<sup>65</sup>

The State is not seeking a change in the definition of universal service, either explicitly or implicitly. No support would flow to provide a new service; indeed, no new or additional support would be provided at all. Rather, currently supported services would be made available for another use that is in the public interest when they are not being used for the purpose for which they are funded if, and only if, the additional use does not increase the amount of federal universal service support that is expended in the first place.

Section 254(e). Section 254(e) provides that a carrier receiving universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" and "[a]ny such support should be explicit and sufficient to achieve the purposes of this

<sup>65</sup> See also ITTA Comments, at 2-3.

section."<sup>66</sup> United Utilities contends that the Petition violates this section because (1) carriers serving schools would receive universal service support to provide a service that is not eligible to receive universal service support and (2) such support would not be explicit.<sup>67</sup>

This argument, like the prior ones, assumes that additional monies would be provided to support Internet access in the affected communities. That is not the case. The only supported services are the services acquired by the school for educational purposes; no new service is being supported. If the Petition is granted, the universal service support received by a carrier in connection with its provision of telecommunications services to a school would be used by that carrier to provide, maintain, and upgrade the facilities used to provide the supported service in the same manner as it is used today. Similarly, the universal service support received by the telecommunications carrier would be no less explicit if the Petition is granted than it is today.<sup>68</sup>

<sup>&</sup>lt;sup>66</sup> 47 U.S.C. § 254(e).

<sup>67</sup> See United Utilities Comments, at 3.

To the extent United Utilities is contending that Internet access services would be supported by the State's petition and such support violates Section 254(e), it is mistaken. Support for Internet access to schools and libraries is provided pursuant to Section 254(h)(2) and is not subject to the requirements of Section 254(e). Non-telecommunications carriers are eligible to receive such support. Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, at ¶ 592-94.

#### B. No Other Commission Rule Needs To Be Waived.

Although some commenters suggest that the State has not identified all of the regulations implicated by its proposal, none has identified any regulation (other than Section 54.504(b)(2)(ii) identified by the State) that must be waived if the proposal set forth in the Petition is to be implemented. ATA suggests that the Petition would effectively waive the Commission's rules concerning funding for wide area networks and that the State failed to address those regulations.<sup>69</sup> Those rules define wide area networks and then provide that the cost of wide area networks shall not be eligible for universal service discounts.

Contrary to ATA's contention, these rules are not implicated by the State's proposal. The State is not seeking support for wide area networks. Such a network is defined as a network that connects computers within the school or library to one or more computers or networks external to the school or library. The school's computers, however, would not be connected to computers outside of the school. As the diagram attached to the Petition shows, computers in the community would be connected to a modem bank and a router separate from the school's equipment. The community access equipment would then connect directly to the equipment necessary to utilize the telecommunications service used by the school during school hours to access the Internet.

See ATA Comments, at 5-6, quoting 47 C.F.R. §§ 54.500 and 54.518.

<sup>&</sup>lt;sup>70</sup> See 47 C.F.R. § 54.500.

Thus, notwithstanding criticism that the State did not identify all relevant regulations, there has been no showing that any Commission regulation other than Section 54.504(b)(2)(ii), which was identified by the State, needs to be waived to implement the proposal set forth in the Petition.

### V. Conclusion

For all of the reasons set forth in the Petition and in these reply comments, the State respectfully requests the Commission to grant its petition, subject to the conditions set forth therein, and waive Section 54.504(b)(2)(ii) so that schools that receive E-rate funding in remote Alaskan villages that lack local or toll-free Internet access can make the E-rate supported services they use to access the Internet available for use by others in the community during non-school hours. The State also requests that the Commission issue a declaratory ruling that no other regulation and no statutory provision prevents the schools from implementing the proposal set forth in the Petition.

Respectfully submitted,

THE STATE OF ALASKA

Robert M. Halperin CROWELL & MORING LLP 1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004

202/624-2543

Attorneys for the State of Alaska

### Of Counsel:

John W. Katz, Esquire Special Counsel to the Governor Director, State-Federal Relations Office of the State of Alaska Suite 336 444 North Capitol Street, N.W. Washington, D.C. 20001

Date: May 7, 2001

1807483

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of May, 2001, a copy of the foregoing Reply Comments of the State of Alaska was served by hand and/or first-class mail on the following:

The Honorable Michael K. Powell Chairman Federal Communications Commission 445 12th Street, S.W., Rm. 8 B201 Washington, DC 20554

The Honorable Susan Ness Commissioner Federal Communications Commission 445 12th Street, S.W., Rm. 8 B115 Washington, DC 20554

The Honorable Harold Furchtgott-Roth Commissioner Federal Communications Commission 445 12th Street, S.W., Room 8 A302 Washington, DC 20554

The Honorable Gloria Tristani Commissioner Federal Communications Commission 445 12th Street, S.W., Rm. 8C302 Washigton, DC 20554

Dorothy Atwood Chief, Common Carrier Bureau Federal Communications Commission 445 12th Street, S.W., Rm. 5 C450 Washington, DC 20554

Ellen Blackler Special Assistant to Bureau Chief Common Carrier Bureau Federal Communications Commission 445 12th Street, S.W., Rm. 5 C413 Washington, DC 20554 Cheryl L. Parrino CEO Universal Service Administrative Co. 583 D'Onofreo Drive, Suite 201 Madison, WI 53719

Kate Moore President Schools & Libraries Division Universal Service Administrative Co. 2120 L Street, N.W., Suite 600 Washington, DC 20037

Lake and Peninsula Borough P.O. Box 495 King Salmon, AK 99613

Diana Wiberg Library Media Coordinator Lower Kuskokwim School District Box 305 Bethel, AK 99559

Kip Layton, Jr. Site Administrator Lower Kuskokwim School District Box 305 Bethel, AK 99559

Richard Taylor Technology Director Lower Kuskokwim School District Box 305 Bethel, AK 99559 Daniel Walker Educator Lower Kuskokwim School District Box 305 Bethel, AK 99559

Dave McClure
Executive Director
Bristol Bay Housing Authority
P.O. Box 50
Dillingham, AK 99576

Francis Thompson Administrator Algaaciq Native Village P.O. Box 48 St. Mary's, AK 99658

James Rowe Executive Director Alaska Telephone Association 201 E. 56th, Suite 114 Anchorage, AK 99518

Gene Delmore, S.J.
Pastor
Immaculate Conception Catholic
790 River St.
Bethel, AK 99559

Tina M. Pidgeon Drinker Biddle & Reath LLP 1500 K Street, N.W., Suite 100 Washington, DC 20005

Michael Opp Director Alyeska Central School 801 West 10th Street, Suite 200 Juneau, AK 99801-1894 Carl Morgan, Jr.
State Representative
Alaska State Legislature
State Capitol Building, Suite 434
Juneau, AK 99801-1182

Mark R. Hamilton President University of Alaska Statewide System 202 Burtovich Bldg., P.O. Box 755000 Fairbanks, AK 99775-5000

Brett Hill Technology Coordinator Lake & Peninsula School District P.O. Box 495 King Salmon, AK 99613

Karen Crane Director Libraries, Archives and Museum P.O. Box 81084 Fairbanks, AK 99708

Darren J. Franz President Kodiak Chamber of Commerce P.O. Box 1485 Kodiak, AK 99615

Ramon F. Gandia Nook Net P.O. Box 970 Nome, AK 99762

Steve Hamlen President United Utilities, Inc. 5450 A Street Anchorage, Ak 99518 Lawrence E. Sargeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington, DC 20005

David W. Zesiger
Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20036

Karen Brinkmann Richard R. Cameron Jeffrey A. Marks Latham & Watkins 555 Eleventh Street, N.W., Suite 1000 Washington, DC 20004-1304

Sharon M. Davis